

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YI T. DONG and RU H. ZHAO,

Plaintiffs,

-against-

CCW FASHION INC.;  
GOLDEN PHOENIX CLOTHING INC.;  
53 FASHION INC.;  
FA MING LIU a.k.a. JIMMY LIU;  
BI FENG ZHOU a.k.a. JOYCE ZHOU;  
and MEI ZHEN LIU,

Defendants.

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YI T. DONG and RU H. ZHAO,

Plaintiffs,

-against-

MEI ZHEN LIU  
and LAN ZHEN LIU,

Defendants.

-----x

DOUGLAS F. EATON, United States Magistrate Judge.

PROCEDURAL BACKGROUND

1. Judge Preska consolidated these two cases on February 20, 2008. The plaintiffs are two men who were employed as garment workers in the defendants' factories.

2. In the 2006 case, both plaintiffs sued six defendants -- CCW Fashion Inc., Golden Phoenix Clothing Inc., 53 Fashion Inc., and three individual defendants (Fa Ming Liu, his wife Bi Feng Zhou, and his sister Mei Zen Liu). The 2006 Complaint was served upon all of the defendants except for Mei Zhen Liu. (1/16/09 Kimerling 2nd Supp. Decl. ¶ 26.) The 2006 Complaint (¶¶ 7-10) alleged that the three individual defendants owned the corporate defendants and also had the authority to (a) hire or fire the plaintiffs, (b) set the plaintiffs' wages and working conditions,

(c) maintain plaintiffs' employment records, and (d) report plaintiffs' earnings to the appropriate government agencies. (2006 Compl. ¶¶ 7-10.)

3. In June 2004, Golden Phoenix Clothing Inc. was dissolved. It was succeeded by CCW Fashion Inc. (2006 Complaint ¶ 8.) After plaintiffs left the employ of CCW Fashion Inc., it changed its name to 53 Fashion Inc. Neither plaintiff has worked for 53 Fashion Inc. (2006 Complaint ¶¶ 12, 22-23; 2007 Complaint ¶¶ 9, 19-20.)

4. In the 2007 case, both plaintiffs sued Mei Zhen Liu again and also a new defendant Lan Zhen Liu. The 2007 Complaint (¶¶ 6-7) alleged that Lan Zhen Liu was also an owner of the three corporations, and also had the authority to hire the plaintiffs and set their wages, etc. (2007 Compl. ¶¶ 6-7.) The 2007 complaint was served upon both Mei Zhen Liu and Lan Zhen Liu, but neither of them has ever filed an answer or other response.

5. On November 13, 2006, attorney Bruce Fenton filed an answer in the 2006 case on behalf of CCW Fashion Inc., Golden Phoenix Clothing Inc., Fa Ming Liu, and Bi Feng Zhou. 53 Fashion Inc. did not file an answer or other response. On October 4, 2007, Judge Preska granted Mr. Fenton leave to make a motion to withdraw as counsel, but he has never made such a motion.

6. On February 20, 2008, Judge Preska consolidated the two cases. (See her June 2, 2008 Order to Show Cause.) On June 2, 2008, Judge Preska entered default judgments against three defendants (Mei Zhen Liu, Lan Zhen Liu, and 53 Fashion Inc.). On June 20, 2008, she entered default judgments against the remaining four defendants (CCW Fashion Inc., Golden Phoenix Clothing Inc., Fa Ming Liu, and Bi Feng Zhou); those four defendants had filed answers, but then they ignored their attorney and ignored Judge Preska's June 2, 2008 Order to Show Cause.

7. In connection with the June 2 and June 20 default judgments, Judge Preska asked me to conduct an inquest on damages as to all seven defendants.

8. In a letter to me dated June 24, 2008, Mr. Fenton wrote:

I am writing to advise the court that I did not submit any response to the plaintiff's motion for an Order to Show Cause which had been scheduled for June 20, 2008 due to the fact that the defendants have continued to ignore my attempts to communicate with

them and have given no indication that they wish to contest this matter at this point.

After I received the Order to Show Cause I wrote to all the defendants by regular mail and advised of the new court date and wrote to the corporate defendants by certified mail but did not receive any response from any of the defendants and my certified letters were returned without signature.

I also came to the court on June 20, 2008 at 9:00 A.M. to see if any of the defendants would appear for the court date but none of the defendants appeared.

I am not opposing any of the court's actions but merely informing the Court of the reason for not submitting responsive papers.

To date, Mr. Fenton has not formally moved to withdraw as counsel. As shown at the end of today's Report, **I direct Mr. Fenton to serve copies of this Report and Recommendation upon each of the seven defendants at their last known addresses.**

9. On July 8, 2008, I issued a Scheduling Order setting forth a briefing schedule for the parties' inquest memoranda. On July 15 and 16, 2008, attorney Kenneth Kimerling attempted to file plaintiffs' memorandum of law and declarations in support of the inquest. His docket entries contained errors and were rejected by the Clerk's Office. He re-filed the documents on October 29, 2008. (See 2006 case Docket Items # 25-34; 2007 case Docket Items # 11-18.)

10. On December 18, 2008, Judge Preska mistakenly granted the plaintiffs judgment in the 2007 case in the amount of \$102,624.91 in damages and \$350 in costs. (See 2007 case Docket Item # 19.) Five days later, Judge Preska withdrew that judgment and again referred the case to me to make a recommendation as to the amount of damages. (See 2006 case Docket Item # 35; 2007 case Docket Item # 20.)

11. On January 16, 2009, Mr. Kimerling filed a Second Supplemental Declaration with revised exhibits. On February 2, 2009, he submitted an explanatory letter on the issue of prejudgment interest in the 2007 cases. To date, none of the seven defendants has filed any opposition papers.

## DISCUSSION

12. Upon the entry of a default judgment, the Court accepts as true all of the facts alleged in the pertinent Complaint, except allegations relating to the amount of damages. See *Au Bon Pain Corp. v. Artect Inc.*, 653 F.2d 61, 65 (2d Cir. 1981). An inquest is then conducted to determine the amount of damages. The 2006 and 2007 Complaints allege as follows.

13. From September 2003 until the end of May 2005, plaintiff Dong worked as an ironer in the defendants' garment factories. From February 2004 until the end of May 2005, plaintiff Zhao worked as a hanger in the defendants' garment factories. (2006 Complaint ¶¶ 12-15; 2007 Complaint ¶¶ 9, 11-12.)

14. The two plaintiffs usually worked seven days a week for more than 12 hours a day, but they never received any overtime pay or any spread-of-hours pay. They were paid in cash, and the defendants took a 5% kickback from their wages. Dong's hourly rate was below the minimum wage, while Zhao's hourly rate was slightly above the minimum wage. During their last four months of employment, neither plaintiff received any pay for their work. Plaintiffs claim that the defendants did not maintain accurate records of their time and salary, and that the defendants intentionally and fraudulently failed to report the cash payments to the appropriate federal and state government agencies. (2006 Complaint ¶¶ 1-2, 13, 16-19, 20-21; 2007 Complaint ¶¶ 1-2, 13-18. See also 12/30/07 Dong Decl. and 11/19/07 Zhao Decl.)

15. In 2005, the United States Department of Labor ("DOL") investigated the labor conditions at CCW Fashion Inc. Pursuant to an agreement with the DOL, CCW Fashion Inc. promised to make installment payments of certain unpaid wages, namely \$9,441.28 to Dong and \$5,834.73 to Zhao. By July 2005, CCW Fashion Inc. made three of the installment payments (totaling \$2,800 to Dong and \$2,800 to Zhao) but then made no more payments.

16. CCW Fashion Inc. then changed its name to 53 Fashion Inc., but retained its same managers and employees. (2006 Complaint ¶¶ 22-23; 2007 Complaint ¶¶ 19-20; 12/30/07 Dong Decl. ¶¶ 6-7; 11/19/07 Zhao Decl. ¶¶ 6-7.) I note that the individual defendants may be held liable as employers under both the U.S. Fair Labor Standards Act ("FLSA") and New York Labor Law ("N.Y. Lab."). 29 U.S.C. § 203(d); N.Y. Lab. § 2(6).

17. Mr. Kimerling seeks judgments for Dong of \$78,519.52 in the 2006 case and \$69,750.60 in the 2007 case, and judgments for Zhao of \$35,890.67 in the 2006 case and \$33,269.61 in the 2007

case. (1/16/09 Kimerling 2nd Supp. Decl. ¶¶ 26-27 and its exhibits.) Those figures already include prejudgment interest through December 31, 2008. For the period beginning January 1, 2009 to the date of judgment, Dong seeks prejudgment interest at the rate of \$4.07 per day (\$1.01 + \$3.06) and Zhao seeks prejudgment interest at the rate of \$1.47 per day (\$0.95 + \$0.52). This is explained on the annexed charts. See also 1/16/09 Kimerling 2nd Supp. Decl. ¶¶ 10-11, 16, 29, 24; 2/2/09 Kimerling letter.) Mr. Kimerling seeks \$8,810 in attorney's fees and costs in the 2006 case and \$2,625 in attorney's fees and costs in the 2007 case. (*Id.* at ¶ 29.) I have reviewed Mr. Kimerling's January 16, 2009 damage charts, and I find them to be accurate. In particular, I note that the charts show that the defendants are being given credit for the "piece rate wages" that were received by the plaintiffs, and for the "DOL payments" that were received by the plaintiffs pursuant to CCW Fashion, Inc.'s agreement with the U.S. Department of Labor.

18. Mr. Kimerling acknowledges:

The amounts owed in 2006 and 2007 are overlapping. To the extent that moneys are collected from the 2006 case defendants, these funds [will] offset the amounts owed in the 2007 case. Similarly, [to the extent that moneys are] collected from the 2007 defendants, these funds [will] offset amounts that are owed in the 2006 case.

(1/16/09 Kimerling 2nd Supp. Decl. ¶ 28.) By contrast, there is no such overlap or offset between (a) the attorney's fees and costs awarded in the 2006 case, and (b) the attorney's fees and costs awarded in the 2007 case. (1/16/09 Kimerling 2nd Supp. Decl. ¶ 29.)

19. In other words: Leaving aside attorneys fees and any post-judgment interest, plaintiff Dong could not collect more than \$78,519.52 and plaintiff Zhao could not collect more than \$35,890.67.

20. I shall now set forth detailed reasons to support the recommended damages, interest, fees and costs.

Failure to pay minimum wage,  
overtime pay and spread-of-hours wages

21. When the two plaintiffs began their employment with the defendants in 2003 and 2004, the federal minimum wage and the New York State minimum wage were \$5.15 an hour. However, on January

1, 2005, the New York State minimum wage increased to \$6.00 an hour. 29 U.S.C. § 206(a); N.Y. Lab. § 652(1). Pursuant to 29 U.S.C. § 218(a), the higher New York State minimum wage rate applied to plaintiffs' 2005 employment. *Chan v. Sung Yue Tung Corp.*, 2007 WL 313483, at \*25 (S.D.N.Y. Feb. 1, 2007) (Lynch, J.). In addition, New York law required manual workers to be paid weekly. N.Y. Lab. § 191(a).

22. Pursuant to the FLSA, an employee who works more than forty hours in a workweek is entitled to overtime pay "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). New York Labor law has a similar requirement, see N.Y. Comp. Codes R. & Regs. ("N.Y.C.R.R.") title 12, § 137-1.3.

23. New York regulations also require an employee to pay "one hour's pay at the basic minimum wage hourly rate, in addition to the minimum wage required in this Part for any day in which (a) the spread of hours exceeds 10 hours[.]" N.Y.C.R.R. title 12, § 142-2.4. "'Spread of hours' is the 'interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty.'" *Almeida v. Aguinaga*, 500 F.Supp.2d 366, 369 (S.D.N.Y. Aug. 15, 2007) (Stanton, J.), quoting N.Y.C.R.R. title 12, § 142-2.18.

24. Mr. Kimerling has scrupulously noted that the New York Department of Labor issued a private party opinion letter that would not allow any "spread-of-hours" pay in the following situation:

if the weekly wages actually paid to an employee equal or exceed the total of: (i) 40 hours paid at the basic minimum wage rate; (ii) overtime paid at the particular employee's overtime rate; and (iii) one hour's basic minimum wage rate for each day the employee worked in excess of 10 hours, then no additional compensation is due.

Several judges in our Court and in the New York State courts have adopted the limiting interpretation quoted above. See *Almeida*, 500 F.Supp.2d at 369 and the cases cited therein. However, that limiting interpretation does not affect the case at bar. Dong and Zhao each worked 84 hours per week, and earned less than a minimum wage earner would earn for working 84 hours per week. Accordingly, Dong and Zhao are each entitled to "spread-of-hours" damages.

25. In addition to actual damages, plaintiffs may recover liquidated damages under the FLSA and New York State law for the same minimum wage and overtime violations. *Ke v. Saigon Grill, Inc.*, 2008 WL 5337230, at \*15 (Oct. 21, 2008) (Dolinger, M.J.); *Chan*, 2007 WL 313483, at \*28-29. The FLSA allows for an additional 100% of the amount owed for minimum wage and/or overtime violations, which means that those amounts are doubled. 29 U.S.C. § 216(b); *Reich v. Southern New England Telecommunications Corp.*, 121 F.3d 58, 71 (2d Cir. 1997); *Ayres v. 127 Restaurant Corp.*, 12 F. Supp.2d 305, 309 (S.D.N.Y. 1998) (Chin, J.). New York Labor Law allows for an additional 25% for "willful" non-payment of wages if the employer "'knowingly, deliberately, [or] voluntarily' disregards its obligation to pay wages." *Ayres*, 12 F. Supp.2d at 309, quoting *P & L Group, Inc. v. Garfinkel*, 541 N.Y.S.2d 535, 537 (2d Dep't 1989); N.Y. Lab. § 198(1a) and § 663(2). The 2006 Complaint (at ¶ 26) and the 2007 Complaint (at ¶ 23) alleged that the defendants "willfully and intentionally" disregarded their obligations to pay the plaintiffs' their wages, including the minimum wage and overtime pay. The defendants defaulted and therefore plaintiffs are entitled to (a) a finding that the defendants' conduct was willful, and (b) an award of the additional damages provided by statute. *Boyke v. Superior Credit Corp.*, 2006 WL 3833544 (N.D.N.Y. Dec. 28, 2006) (Munson, J.).

26. In the case at bar, the two plaintiffs each submitted signed Declarations stating:

I was not paid on a regular basis.... I worked 7 days a week at least 12 hours a day, starting at [8:00 a.m. in the morning for Dong and 9:00 a.m. in the morning for Zhao] and working[,] with only a short break for lunch[,] until [8:30 in the evening for Dong and 9:30 in the evening for Zhao] and even later if we were required to finish some work.

(12/30/07 Dong Decl. ¶¶ 3-4; 11/19/07 Zhao Decl. ¶¶ 3-4.) The plaintiffs did not receive any spread-of-hours pay or any overtime pay, even though they regularly worked more than 10 hours a day. (2006 Complaint ¶¶ 17-18; 2007 Complaint ¶¶ 14-15.) Moreover, both plaintiffs allege that their "boss took a 5% kickback from our cash wages." (12/30/07 Dong Decl. ¶ 3; 11/19/07 Zhao Decl. ¶ 3.) Such action is illegal under New York Labor Law unless the deduction is "made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency..." (N.Y. Lab. § 193.)

27. Both federal law and New York State law require



employers to keep detailed records of their employees' wages, hours, deductions, and other employment information. See 29 U.S.C. § 211(c); N.Y. Lab. Law § 195(4); *Chan*, 2007 WL 313483, at \*23. In the absence of accurate records, plaintiffs' recollections and estimates of their hours are presumed to be correct. *Chen v. Jenna Lane, Inc.*, 30 F. Supp.2d 622, 624 (S.D.N.Y. 1998) (Carter, J.) (Peck, M.J.), citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-688, 66 S.Ct. 1187, 1192 (1946).

28. Dong and Zhao allege that the defendants did not keep any records of the hours they worked, or of the amount of wages that were paid to them. (2006 Complaint ¶¶ 24-25; 2007 Complaint ¶¶ 21-22.) Fortunately, both plaintiffs kept copies of corroborating documents that show their piece productions. (11/19/07 Zhao Decl. ¶ 5 and its exhibit; 12/30/07 Dong Decl. ¶ 5 and its exhibit.) Plaintiffs' attorney Mr. Kimerling prepared spreadsheet charts of their wages and of their payments, and I have annexed the corrected copies of those spreadsheets to this Report and Recommendation. (1/16/09 Kimerling 2nd Supp. Decl. and its exhibits.)

29. Prejudgment interest is recoverable on the actual damages. On the claims for liquidated damages, prejudgment interest is recoverable under New York Labor Law, but not under the FLSA. See *Ke v. Saigon Grill, Inc.*, 2008 WL 5337230, at \*15, and *Liu v. Jen Chu Fashion Corp.*, 2004 WL 33412, at \*5 (S.D.N.Y. Jan. 7, 2004) (Peck, M.J.), Report and Recommendation adopted by Judge Howell on Feb. 26, 2004. Both decisions cited *Reilly v. Natwest Mkts. Group Inc.*, 181 F.3d 253, 265 (2d Cir. 1999).

30. In our 2006 case, all of the claims were timely under the FLSA's 3-year statute of limitations, and hence plaintiffs did not seek State-law damages in the 2006 case. (2/2/09 Kimerling letter.) However, two of the defendants (Mei Zhen Liu and Lan Zhen Liu) were not served in the 2006 case, but only in the 2007 case, which was filed on November 2, 2007. Therefore, the FLSA's 3-year statute of limitations bars any federal claim on many of the early months of employment. The New York Labor law has a 6-year statute of limitations. Accordingly, as to the two defendants named in the 2007 case, the plaintiffs are seeking damages, liquidated damages and prejudgment interest under New York Labor Law. (*Id.* and 1/16/09 Kimerling 2nd Supp. Decl. ¶¶ 13-16, 24-25 and its exhibits.)

31. I recommend prejudgment interest at the New York statutory rate of 9% per year. See N.Y. C.P.L.R. § 5004. N.Y. C.P.L.R. § 5001(b) states: "Where such damages were incurred at



various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date." *Liu*, 2004 WL 33412 at \*5. Mr. Kimerling reasonably proposes the following four midpoint dates to start the running of prejudgment interest: (a) July 28, 2004 for Dong's 2006 case for spread-of-hours and kickback wages; (b) July 28, 2004 for Dong's 2007 case for spread-of-hours and kickback wages, and April 15, 2004 for minimum wage and overtime; (c) October 12, 2004 for Zhao's 2006 case for spread-of-hours and kickback wages; and (d) October 12, 2004 for Zhao's 2007 case for spread-of-hours and kickback wages and July 1, 2004 for minimum wage and overtime. See 1/16/09 Kimerling 2nd Supp. Decl. ¶¶ 9, 16, 20, and 24, and its exhibits.

#### Attorney's Fees and Costs

32. Plaintiffs are entitled to attorney's fees and costs under both the FLSA and New York State law. 29 U.S.C. § 216(b); N.Y. Lab. §§ 198(1-a), 663(1). In determining whether a requested attorney's fee is reasonable, the starting point is the "lodestar amount," which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. See *Toys "R" Us, Inc. v. Abir*, 1999 WL 61817, at \*1 (S.D.N.Y. Feb. 10, 1999). There is a strong presumption that the lodestar amount is reasonable. *Id.* at \*1.

33. In the case at bar, plaintiffs' attorney Mr. Kimerling has extensive experience litigating FLSA cases. He recently tried a case before Magistrate Judge Dolinger in which a jury awarded his clients \$4.6 million dollars in back pay and damages. *Ke v. Saigon Grill, Inc.*, 2008 WL 5337230 (Oct. 21, 2008). Moreover, Judge Sand, Judge Lynch, Judge Holwell, and Magistrate Judge Peck have all found his hourly rate of \$350 to be reasonable. *Nam Yang v. ACBL Corp.*, 2006 WL 435720, at \*3 (S.D.N.Y. Feb. 22, 2006) (Sand, J.); *Liu v. Jen Chu Fashion Corp.*, 2004 WL 33412, at \*6 (S.D.N.Y. Jan. 7, 2004) (Peck, M.J.), Report and Recommendation adopted by Judge Howell on Feb. 26, 2004; *Moon v. Gab Kwon*, 2002 WL 31512816, at \*2 (S.D.N.Y. Nov. 8, 2002) (Lynch, J.).

34. Mr. Kimerling seeks \$8,400 in attorney's fees for 24 hours of work he conducted on the 2006 case, and \$2,275 in attorney's fees for 6.5 hours of work he conducted on the 2007 case. (12/4/07 Kimerling Decl. ¶¶ 22 and Exh. H; 7/15/08 Kimerling Supp. Decl. ¶¶ 17-18.) I find these amounts to be reasonable.

35. Plaintiffs also seek the following costs. On the 2006

case, \$410 (a \$350 filing fee plus \$60 for service of the Summons and Complaint on defendant 53 Fashion Inc.). (12/4/07 Kimerling Decl. ¶ 23.) On the 2007 case, \$350 (the \$350 filing fee). (7/15/08 Kimerling Supp. Decl. ¶ 19.) I find these amounts to be reasonable.

#### CONCLUSION AND RECOMMENDATION

Judge Preska consolidated these two cases. I recommend that she issue a single judgment listing both docket numbers. For the reasons set forth above, I recommend that Judge Preska enter judgment as follows:

(A) To plaintiff Yi T. Dong: total damages in the 2006 case for the defendants' FLSA and New York Labor Law violations, in the amount of \$78,519.52. This amount includes prejudgment interest at the annual rate of 9% for the period through December 31, 2008. For the period beginning January 1, 2009 until the date of judgment, prejudgment interest is awarded at the rate of \$1.01 per day. The judgment for the 2006 case shall be entered against defendants CCW Fashion Inc., Golden Phoenix Clothing Inc., 53 Fashion Inc., Fa Ming Liu, and Bi Feng Zhou, jointly and severally.

(B) To plaintiff Yi T. Dong: total damages in the 2007 case for the defendants' FLSA and New York Labor Law violations, in the amount of \$69,750.60. This amount includes prejudgment interest at the annual rate of 9% for the period through December 31, 2008. For the period beginning January 1, 2009 until the date of judgment, prejudgment interest is awarded at the rate of \$4.07 per day. The judgment for the 2007 case shall be entered against defendants Mei Zhen Liu and Lan Zhen Liu, jointly and severally.

(C) To the extent that any money is collected pursuant to Paragraph A, those funds will offset the amounts owed in Paragraph B. To the extent that any money is collected pursuant to Paragraph B, those funds will offset the amounts owed in Paragraph A.

(D) To plaintiff Ru H. Zhao: total damages in the 2006 case for the defendants' FLSA and New York Labor Law violations, in the amount of \$35,890.67. This amount includes prejudgment interest at the annual rate of 9% for the period through December 31, 2008. For the period beginning January 1, 2009 until the date of judgment, prejudgment interest is awarded at the rate of \$0.95 per day. The judgment for the 2006 case shall be entered against defendants CCW Fashion Inc., Golden Phoenix Clothing

Inc., 53 Fashion Inc., Fa Ming Liu, and Bi Feng Zhou, jointly and severally.

(E) To plaintiff Ru H. Zhao: total damages in the 2007 case for the defendants' FLSA and New York Labor Law violations, in the amount of \$33,269.61. This amount includes prejudgment interest at the annual rate of 9% for the period through December 31, 2008. For the period beginning January 1, 2009 until the date of judgment, prejudgment interest is awarded at the rate of \$1.47 per day. The judgment for the 2007 case shall be entered against defendants Mei Zhen Liu and Lan Zhen Liu, jointly and severally.

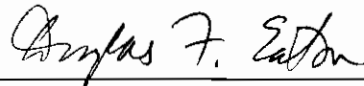
(F) To the extent that any money is collected pursuant to Paragraph D, those funds will offset the amounts owed in Paragraph E. To the extent that any money is collected pursuant to Paragraph E, those funds will offset the amounts owed in Paragraph D.

(G) To both plaintiffs, attorney's fees and costs of \$8,810.00 are awarded against defendants CCW Fashion Inc., Golden Phoenix Clothing Inc., 53 Fashion Inc., Fa Ming Liu, and Bi Feng Zhou, jointly and severally.

(H) To both plaintiffs, attorney's fees and costs of \$2,625.00 for the 2007 case are awarded against defendants Mei Zhen Liu and Lan Zhen Liu, jointly and severally.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, any party may object to this recommendation within 10 business days after being served with a copy (i.e., **no later than March 10, 2009**), by filing written objections with the Clerk of the U.S. District Court and mailing copies (a) to the opposing party, (b) to the Hon. Loretta A. Preska, U.S.D.J. at Room 1320, 500 Pearl Street, New York, NY 10007 and (c) to me at Room 1360, 500 Pearl Street. Failure to file objections within 10 business days will preclude appellate review. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), and 6(e). Any request for an extension of time must be addressed to Judge Preska.





DOUGLAS F. EATON  
United States Magistrate Judge  
500 Pearl Street, Room 1360  
New York, New York 10007  
Telephone: (212) 805-6175  
Fax: (212) 805-6181

Dated: New York, New York  
February 19, 2009

Copies of this Report and Recommendation and corrected copies of Mr. Kimerling's 1/16/09 spreadsheet charts now titled:

1. Computation of Damages for Mr. Dong in the 2006 Case;
2. Computation of Damages for Mr. Zhao in the 2006 Case;
3. Summary of Damages in the 2006 Case;
4. Computation of Damages for Mr. Dong in the 2007 Case;
5. Computation of Damages for Mr. Zhao in the 2007 Case;
6. Summary of Damages in the 2007 Case

were mailed on this date to:

Kenneth Kimerling, Esq.  
Asian American Legal Defense  
99 Hudson Street  
New York, NY 11355  
(also by fax to 212-966-4303)

Bruce Fenton, Esq.  
48 Wall Street, Suite 1100  
New York, NY 10005  
(also by fax to 212-918-4841)

**(I direct Mr. Fenton to serve copies of this Report and Recommendation upon each of the seven defendants at their last known addresses; see Paragraphs 5 and 8 of today's Report. If any of the seven defendants wishes to make an objection to the money judgments proposed in this Report and Recommendation, and wants more time beyond March 10, 2009, then such defendants must write to Judge Preska as soon as possible and request a new deadline.)**

Hon. Loretta A. Preska  
United States District Judge  
500 Pearl Street, Room 1320  
New York, New York 10007

## COMPUTATION OF DAMAGES FOR MR. DONG IN THE 2006 CASE

	A	B	C	D	E	F	G	H	I	J	K
1											
2											
3	End Period	#Day/Wk	#Hrs/Day	#Hrs/wk	Hr Rate	Min Wage	OT	Total MW & OT Due	Total Wages Paid	MW & OT Owed	Spread of Hours
4											
5	9/28/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
6	10/5/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
7	10/12/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
8	10/19/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
9	10/26/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
10	11/2/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
11	11/9/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
12	11/16/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
13	11/23/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
14	11/30/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
15	12/7/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
16	12/14/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
17	12/21/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
18	12/28/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
19	1/4/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
20	1/11/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
21	1/18/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
22	1/25/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
23	2/1/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
24	2/8/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
25	2/15/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
26	2/22/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
27	2/29/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
28	3/7/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
29	3/14/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
30	3/21/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
31	3/28/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
32	4/4/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
33	4/11/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
34	4/18/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
35	4/25/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
36	5/2/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
37	5/9/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
38	5/16/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
39	5/23/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
40	5/30/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
41	6/6/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
42	6/13/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
43	6/20/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
44	6/27/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
45	7/4/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
46	7/11/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
47	7/18/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
48	7/25/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
49	8/1/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
50	8/8/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
51	8/15/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
52	8/22/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
53	8/29/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
54	9/5/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
55	9/12/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
56	9/19/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
57	9/26/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
58	10/3/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
59	10/10/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
60	10/17/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$131.65	\$414.25	\$36.05
61	10/24/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
62	10/31/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
63	11/7/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05



[illegible]



## COMPUTATION OF DAMAGES FOR MR. ZHAO IN THE 2006 CASE

	A	B	C	D	E	F	G	H
1								
2								
3	End Period	#day/wk	# hrs/day	# hrs/wk	Wage Rec.	Hr. Rate or MW	OT & MW Owed	Spread of Hours
4	2/28/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
5	3/5/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
6	3/12/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
7	3/19/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
8	3/26/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
9	4/2/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
10	4/9/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
11	4/16/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
12	4/23/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
13	4/30/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
14	5/7/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
15	5/14/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
16	5/21/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
17	5/28/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
18	6/4/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
19	6/11/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
20	6/18/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
21	6/25/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
22	7/2/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
23	7/9/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
24	7/16/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
25	7/23/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
26	7/30/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
27	8/6/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
28	8/13/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
29	8/20/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
30	8/27/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
31	9/3/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
32	9/10/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
33	9/17/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
34	9/24/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
35	10/1/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
36	10/8/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
37	10/15/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
38	10/22/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
39	10/29/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
40	11/5/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
41	11/12/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
42	11/19/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
43	11/26/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
44	12/3/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
45	12/10/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
46	12/17/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
47	12/24/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
48	12/31/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05

	A	B	C	D	E	F	G	H
3	End Period	#day/wk	# hrs/day	# hrs/wk	Wage Rec.	Hr. Rate or MW	OT & MW Owed	Spread of Hours
49	1/7/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
50	1/14/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
51	1/21/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
52	1/28/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
53	2/4/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
54	2/11/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
55	2/18/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
56	2/25/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
57	3/4/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
58	3/11/05	7	12	84	\$204.81	\$6.00	\$431.19	\$42.00
59	3/18/05	7	12	84		\$6.00	\$636.00	\$42.00
60	3/25/05	7	12	84		\$6.00	\$636.00	\$42.00
61	4/1/05	7	12	84		\$6.00	\$636.00	\$42.00
62	4/8/05	7	12	84		\$6.00	\$636.00	\$42.00
63	4/15/05	7	12	84		\$6.00	\$636.00	\$42.00
64	4/22/05	7	12	84		\$6.00	\$636.00	\$42.00
65	4/29/05	7	12	84		\$6.00	\$636.00	\$42.00
66	5/6/05	7	12	84		\$6.00	\$636.00	\$42.00
67	5/13/05	7	12	84		\$6.00	\$636.00	\$42.00
68	5/20/05	7	12	84		\$6.00	\$636.00	\$42.00
69	5/27/05	5	12	60		\$6.00	\$366.00	\$30.00
70							\$14,398.84	\$2,492.25
71					FLSA and/or NYS Liq Damages		\$17,998.55	\$623.06
72	NonPay	\$5,834.73					\$32,397.39	\$3,115.31
73	Weeks	11.40						
74					TOTAL MW, OT & SOH OWED		\$35,512.70	
75								
76								
77	Piece rate wages		\$27,374.47					
78	5% kickback		\$1,368.72					
79	NYS Liq Dam		\$342.18					
80	Total Owed		\$1,710.90					
81								
82	Prejudgment Interest Spread of Hours & Kickback Wages							
83	Mid Point	10/12/2004						
84	2/28/04							
85	5/27/05	12/31/2008						
86	Years since midpoint		4.2219178					
87	S.O.H & Kickback Owed		\$3,860.97					
88	Interest owed 12/31/08		\$1,467.06					
89	Daily Interest		\$0.95					

## SUMMARY OF DAMAGES IN THE 2006 CASE

Item	Yi Dong	Ru Zhao
Overtime & Min. Wage & Spread of Hours Claims	\$78,642.66	\$35,512.70
5% Kick Back	\$1,036.76	\$1,710.90
Interest Owed	\$1,640.10	\$1,467.06
<b>Subtotal</b>	<b>\$81,319.52</b>	<b>\$38,690.67</b>
Non payment recovered July 2005	\$2,800.00	\$2,800.00
<b>Total Owed</b>	<b>\$78,519.52</b>	<b>\$35,890.67</b>

2007

COMPUTATION OF DAMAGES FOR MR. DONG IN THE ~~2007~~ CASE

	A	B	C	D	E	F	G	H	I	J	K
1											
2											
3	End Period	#Day/Wk	#Hrs/Day	#Hrs/wk	Hr Rate	Min Wage	OT	Total MW & OT Due	Total Wages Paid	MW & OT Owed	Spread of Hours
4											
5	9/28/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
6	10/5/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
7	10/12/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
8	10/19/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
9	10/26/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
10	11/2/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
11	11/9/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
12	11/16/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
13	11/23/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
14	11/30/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
15	12/7/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
16	12/14/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
17	12/21/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
18	12/28/03	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
19	1/4/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
20	1/11/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
21	1/18/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
22	1/25/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
23	2/1/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
24	2/8/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
25	2/15/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
26	2/22/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
27	2/29/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
28	3/7/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
29	3/14/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
30	3/21/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
31	3/28/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
32	4/4/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
33	4/11/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
34	4/18/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
35	4/25/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
36	5/2/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
37	5/9/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
38	5/16/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
39	5/23/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
40	5/30/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
41	6/6/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
42	6/13/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
43	6/20/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
44	6/27/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
45	7/4/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
46	7/11/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
47	7/18/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
48	7/25/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
49	8/1/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
50	8/8/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
51	8/15/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
52	8/22/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
53	8/29/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
54	9/5/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
55	9/12/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
56	9/19/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
57	9/26/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
58	10/3/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
59	10/10/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$299.21	\$246.69	\$36.05
60	10/17/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90	\$131.65	\$414.25	\$36.05



	A	B	C	D	E	F	G	H	I	J	K
3	End Period	#Day/Wk	#Hrs/Day	#Hrs/wk	Hr Rate	Min Wage	OT	Total MW & OT Due	Total Wages Paid	MW & OT Owed	Spread of Hours
61	10/24/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
62	10/31/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
63	11/7/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
64	11/14/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
65	11/21/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
66	11/28/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
67	12/5/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
68	12/12/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
69	12/19/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
70	12/26/04	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
71	1/2/05	7	12	84	\$5.15	\$432.60	\$113.30	\$545.90		\$545.90	\$36.05
72	1/9/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
73	1/16/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
74	1/23/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
75	1/30/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
76	2/6/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
77	2/13/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
78	2/20/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
79	2/27/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
80	3/6/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
81	3/13/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
82	3/20/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
83	3/27/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
84	4/3/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
85	4/10/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
86	4/17/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
87	4/24/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
88	5/1/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
89	5/8/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
90	5/15/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
91	5/22/05	7	12	84	\$6.00	\$504.00	\$132.00	\$636.00		\$636.00	\$42.00
92	5/29/05	5	12	60	\$6.00	\$360.00	\$60.00	\$420.00		\$420.00	\$30.00
93								\$16,588.20		\$33,127.10	\$3,285.35
94	NonPay	\$9,441.28						FLSA Damages		\$17,897.13	
95	Weeks	31.56						FLSA Liq. Damages		\$17,897.13	
96								NYS Damages		\$15,229.97	\$3,285.35
97								NYS Liq. Damages		\$8,281.77	\$821.34
98	Piece rate wages received			\$16,588.20				Totals		\$59,306.00	\$4,106.69
99	5% of the Cash - Kick back			\$829.41							
100		Liq.Dam.		\$207.35				TOTAL MW, OT, & SOH Owed		\$63,412.69	
101				\$1,036.76							
102											
103											
104											
105	Prejudgment Interest Spread of Hours & Kickback Wages							Prejudgment Interest MW & OT			
106	Mid Point 7/28/2004							Midpoint 4/15/2004			
107	9/28/03							9/28/2003			
108	5/29/05 12/31/2008							11/2/2004 12/31/2008			
109	Years since midpoint	4.428767						Years since midpoint	4.7136986		
110	S O.H & Kickback Owe	\$4,114.76 (829.41 + 3,285.35)						NYS MW & OT OWED		\$15,229.97	
111	Interest owed 12.31.08	\$1,640.10						July 2005 DOL payments		\$2,800	
112	Daily Interest	\$1.01						Total Owed MW & OT		\$12,429.97	
113								Interest owed 12/31/08		\$5,273.20	
114								Daily Interest Rate		\$3.06	

## COMPUTATION OF DAMAGES FOR MR. ZHAO IN THE 2007 CASE

	A	B	C	D	E	F	G	H
1								
2								
3	End Period	#day/wk	# hrs/day	# hrs/wk	Wage Rec.	Hr. Rate or MW	OT & MW Owed	Spread of Hours
4	2/28/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
5	3/5/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
6	3/12/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
7	3/19/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
8	3/26/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
9	4/2/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
10	4/9/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
11	4/16/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
12	4/23/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
13	4/30/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
14	5/7/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
15	5/14/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
16	5/21/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
17	5/28/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
18	6/4/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
19	6/11/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
20	6/18/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
21	6/25/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
22	7/2/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
23	7/9/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
24	7/16/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
25	7/23/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
26	7/30/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
27	8/6/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
28	8/13/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
29	8/20/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
30	8/27/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
31	9/3/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
32	9/10/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
33	9/17/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
34	9/24/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
35	10/1/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
36	10/8/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
37	10/15/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
38	10/22/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
39	10/29/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
40	11/5/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
41	11/12/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
42	11/19/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
43	11/26/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
44	12/3/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
45	12/10/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
46	12/17/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
47	12/24/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
48	12/31/04	7	12	84	\$512.04	\$6.10	\$134.10	\$36.05
49	1/7/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
50	1/14/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00

	A	B	C	D	E	F	G	H
3	End Period	#day/wk	# hrs/day	# hrs/wk	Wage Rec.	Hr. Rate or MW	OT & MW Owed	Spread of Hours
51	1/21/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
52	1/28/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
53	2/4/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
54	2/11/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
55	2/18/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
56	2/25/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
57	3/4/05	7	12	84	\$512.04	\$6.10	\$134.10	\$42.00
58	3/11/05	7	12	84	\$204.81	\$6.00	\$431.19	\$42.00
59	3/18/05	7	12	84		\$6.00	\$636.00	\$42.00
60	3/25/05	7	12	84		\$6.00	\$636.00	\$42.00
61	4/1/05	7	12	84		\$6.00	\$636.00	\$42.00
62	4/8/05	7	12	84		\$6.00	\$636.00	\$42.00
63	4/15/05	7	12	84		\$6.00	\$636.00	\$42.00
64	4/22/05	7	12	84		\$6.00	\$636.00	\$42.00
65	4/29/05	7	12	84		\$6.00	\$636.00	\$42.00
66	5/6/05	7	12	84		\$6.00	\$636.00	\$42.00
67	5/13/05	7	12	84		\$6.00	\$636.00	\$42.00
68	5/20/05	7	12	84		\$6.00	\$636.00	\$42.00
69	5/27/05	5	12	60		\$6.00	\$420.00	\$30.00
70							\$14,452.84	\$2,492.25
71					FLSA Damages		\$9,548.44	
72	NonPay	\$5,834.73			FLSA Liq. Damages		\$9,548.44	
73	Weeks	11.40			NYS Damages		\$4,904.40	\$2,492.25
74					NYS Liq. Damages		\$3,613.21	\$623.06
75							\$27,614.49	\$3,115.31
76								
77	Piece rate wages		\$27,374.47	TOTAL MW, OT & SOH OWED			\$30,729.80	
78	5% kickback		\$1,368.72					
79	NYS Liq Dam		\$342.18					
80	Total Owed		\$1,710.90					
81								
82	Prejudgment Interest Spread of Hours & Kickback Wages							
83	Mid Point	10/12/2004						
84		2/28/04						
85		5/27/05 12/31/2008						
86	Years since midpoint		4.221917808					
87	NYS Kickback & SOH C		\$3,860.97					
88	Interest owed 12/31/08		\$1,467.06					
89	Daily Interest		\$0.95					
90								
91	Prejudgment Interest MW & OT							
92	Midpoint	7/1/04						
93		2/28/04						
94		11/2/04 12/31/2008						
95	Years since midpoint			4.50411				
96	NYS MW & OT owed			\$4,904.40				
97	July 2008 DOL payments			\$2,800				
98	Total Owed			\$2,104.40				
99	Interest Owed 12/31/08			\$853.06				
100	Daily interest			\$0.52				



# SUMMARY OF DAMAGES IN THE 2007 CASE

Item	Yi Dong	Ru Zhao
Overtime & Min. Wage & Spread of Hours Claims	\$63,412.69	\$30,729.80
5% Kick Back	\$1,036.76	\$1,710.90
Interest Owed -Kickback & SOH	\$1,640.10	\$1,640.81
Interest Owed MW & OT	\$6,461.05	\$1,988.10
<b>Subtotal</b>	<b>\$72,550.60</b>	<b>\$36,069.61</b>
Non payment recovered July 2005	\$2,800.00	\$2,800.00
<b>Total Owed</b>	<b>\$69,750.60</b>	<b>\$33,269.61</b>